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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,574	10/28/2003	Denis Barritault	1003-DIV-01	4857

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IP GROUP OF DLA PIPER LLP (US)
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EXAMINER

FERNANDEZ, SUSAN EMILY

ART UNIT	PAPER NUMBER
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1651

NOTIFICATION DATE	DELIVERY MODE
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08/05/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pto.phil@dlapiper.com

Office Action Summary	Application No. 10/695,574	Applicant(s) BARRITAU LT ET AL.	
	Examiner SUSAN E. FERNANDEZ	Art Unit 1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2009 and 14 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/7/09, 7/20/09, 9/14/09(2)</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 20, 2009 has been entered.

Furthermore, the supplemental response filed September 14, 2009, has been received and entered.

Claims 1-69 are cancelled. Claim 70 is pending and examined on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 70 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 70 is indefinite as it is unclear what is defined by the formula $A_aX_xY_yZ_z$. The relationships between A, X, Y, and Z are unclear. Claim 70 is incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: how the monomers A, X, Y, and Z are linked to each other. The polymers of claim 70, RGTA 1112 and RGTA 1113, are described in Table II on page 37 as CM_2DPheS_2 and CM_3DTyrS_2 , respectively. Furthermore, page 34, lines 9-11 indicate that they are

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represented in Figure 9 (note that $\text{CM}_2\text{DPheS}_2$ is written as “ CM_3DPheS ” and $\text{CM}_3\text{DTyrS}_2$ is written as “ CM_3DTrS ” on page 34, but labeled as “ $\text{CM}_3\text{DPheS}_2$ ” and “ $\text{CM}_3\text{DTyrS}_2$ ” on Figure 9).

According to page 29, first paragraph, “A is a glucose monomer on which X, Y and Z are grafted by the intermediary of the hydroxyl functions in position 2 and/or position 3 and/or position 4 and/or by the intermediary of the Y groups for Z...” Claim 70 currently does not provide this recitation which is an essential element. For RGTA 1112 ($\text{CM}_2\text{DPheS}_2$), it is clear from Figure 9 that A is a glucose monomer on which X is grafted by the intermediary of the hydroxyl function in position 2, Y is bonded to the nitrogen of Z and grafted by the intermediary of the hydroxyl function in positions 3 and 4, and Z is bonded to X. For RGTA 1113 ($\text{CM}_3\text{DTyrS}_2$), it is clear from Figure 9 that A is a glucose monomer on which X is grafted by the intermediary of the hydroxyl function in position 2, Y is bonded to the nitrogen and hydroxyl group of Z and grafted by the intermediary of the hydroxyl function in positions 3 and 4, and Z is bonded to X.

Furthermore, the polymers on Figure 9 are listed as on the figure as “From phenylalanine methylester” and “From tyrosine methylester.” Figure 9 shows that for $\text{CM}_3\text{DPheS}_2$, there is a methyl group connected to the phenylalanine. Therefore, the Z group should be listed as “phenylalanine methyl ester” for RGTA 1112. Similarly, for $\text{CM}_3\text{DTyrS}_2$, there is a methyl group connected to the tyrosine. Therefore, the Z group should be listed as “tyrosine methyl ester” for RGTA 1113.

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Response to Arguments

Applicant's arguments filed July 20, 2009 and September 14, 2009, have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new grounds of rejection is made in view of the missing essential elements of claim 70. As discussed above, it is unclear what is defined by the formula $A_aX_xY_yZ_z$.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUSAN E. FERNANDEZ whose telephone number is (571)272-3444. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on (571) 272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leon B Lankford/
Primary Examiner, Art Unit 1651

Susan E. Fernandez
Examiner
Art Unit 1651

sef